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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Closed Captioning and Video Description )  
of Video Programming )  
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)  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
)  
Video Programming Accessibility )

MM Docket No. 95-176

To the Commission:

REPLY COMMENTS OF  
PAXSON COMMUNICATIONS CORPORATION

Paxson Communications Corporation ["PCC"], by its attorneys, submits its reply comments in response to the Commission's Notice of Proposed Rulemaking ["Notice"] in the above-captioned proceeding.<sup>1</sup>

Introduction

PCC is a diversified broadcasting company whose principal businesses consist of a nationwide network of television stations known as the Infomall TV Network or *inTV* dedicated to the airing of long-form paid programming, consisting mainly of infomercials, and a major radio station group operating primarily in Florida. PCC owns approximately nineteen television stations nationwide that air *inTV* programming. Approximately sixteen independently-owned

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<sup>1</sup> Closed Captioning and Video Description of Video Programming, Notice of Proposed Rulemaking, MM Docket No. 95-176, FCC 97-4 (Jan. 17, 1997) ["Notice"].

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television stations carry *inTV* programming.

As demonstrated in its initial set of comments filed in this proceeding<sup>2</sup> PCC supports the Commission's efforts to make video programming accessible to all Americans through closed captioning. Likewise, PCC agrees with the Commission that reasonable timetables and appropriate exemptions will maximize the amount of closed captioned programming that will be available.<sup>3</sup> It is through this balanced approach that PCC proposes that the Commission adopt a ten-year transition schedule and measure compliance annually. PCC also encourages the Commission to exempt from the captioning requirements certain categories of programming such as start-up networks; commercials, particularly local advertising; interstitial and promotional programs; and overnight daypart programs. PCC further supports the Commission's proposal to refrain from adopting quality standards at this time.

**I. The Commission Should Adopt a Reasonable  
Transition Schedule To Implement Closed Captioning**

It is important that the transition to closed captioned programming not cause undue burden on television broadcast operations. Congress recognized this need by directing the Commission to ensure that any closed captioning requirements are not "economically burdensome."<sup>4</sup> Accordingly, the Commission should adopt a reasonable transition schedule for captioning programming as well as a reasonable time period to measure compliance with the new closed captioning requirements.

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<sup>2</sup> Comments of Paxson Communications Corporation, MM Docket 95-176 at 2 (filed February 28, 1997) ["Paxson Comments"]. These Reply Comments are intended to supplement PCC's earlier comments.

<sup>3</sup> Notice para. 2.

<sup>4</sup> 47 U.S.C. § 612 (d)(1).

A. The Commission Should Adopt a Ten-Year Transition.

Ten years is the minimal amount of time required to ensure a smooth transition to providing closed captioning programming. PCC, like other television broadcasters, has already established its annual budgets for 1997, and in some cases, 1998. These budgets do not incorporate either the costs associated with outfitting studios with closed captioning equipment, or the expenses necessary to purchase programming that may be more costly based upon captioning requirements. PCC, therefore, will need at least a full year before it can begin to implement those steps necessary to provide closed captioning programming.

PCC also is faced with reallocating funds necessary to pay for the equipment and resources required to provide closed captioning. Those costs are significant,<sup>5</sup> and would require PCC to siphon funds away from other operational and public service concerns. In particular, it is likely that money PCC intended to allocate to upgrading facilities to digital television ["DTV"] and improving the operations of broadcast stations will be reduced to offset the costs of satisfying closed captioning obligations. This, in turn, may even delay PCC's plans for offering DTV. A ten-year transition period will permit PCC and other similarly-situated broadcasters to allocate financial resources more evenly among these substantial operational concerns.

A longer closed captioning transition also is necessary to ensure the availability of sufficient and affordable captioning services. With a short transition period, it is likely that captioning costs will rise sharply further making the development and implementation of the

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<sup>5</sup> Off-line captioning, used for pre-recorded programs, costs between \$800 to \$2500 per hour. Report, MM Docket No. 95-176 (rel. July 29, 1996) para. 47. Real-time captioning costs between \$300 and \$1200 per hour. Id. para. 48. Even the start-up costs for captioning programming is significant with equipment alone running between \$50,000 and \$75,000. Id. para. 50.

technology more costly and difficult. On the other hand, a longer transition period will allow the captioning market to develop, thus limiting the rise in captioning costs. A longer transition schedule also will reduce the chance that inadequately trained captioners will be used. Adequate training becomes even more important should the Commission decide to impose a quality standard on captioning.

B. The Commission Should Measure Compliance Efforts Annually.

During any transition period the Commission should evaluate a broadcaster's programming over a period of one year to determine if the broadcaster is complying with transition benchmarks. The Commission recognizes that legitimate reasons exist for airing less captioned programs over some weeks and more during others.<sup>6</sup> For instance, a short compliance period could interfere with PCC's ability to air programming that responds to the needs of local communities, and is unlikely to provide an accurate tally of a broadcaster's overall efforts to offer closed captioned programs. Moreover, PCC's volume and program types are not constant but may vary according to the programming season. Consequently, a year long period would allow the Commission to take into consideration the variations that may occur during a broadcaster's programming schedule, particularly in the first few years of transition when captioned programming for productions of the type PCC currently airs may be difficult to obtain. Short period measurements during this time may yield more violations of the requirements, but will not accurately reflect the efforts of broadcasters to fulfill their captioning obligations. However, over the period of a year, the availability of programming will increase and allow broadcasters a greater opportunity to meet the transition benchmarks.

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<sup>6</sup> Notice para. 45.

## **II. The Commission Should Adopt Reasonable Exemptions From Closed Captioning Requirements.**

### **A. The Commission Should Exempt Start-Up Networks from Captioning Requirements.**

The burdens of launching a broadcast network are enormous. Hundreds of millions of dollars can be invested as start-up costs in obtaining programming, developing affiliates, and marketing the network. Initially, viewership is low and the network generates little advertising revenue leading to substantial losses in its early years of operation. Only after several years does a network gain acceptance in the marketplace and reach a break-even point. However, by imposing a captioning requirement, the Commission threatens the development of new broadcast television networks. These additional costs would surely act as a market barrier stifling the development of new and diverse programming outlets. Therefore, the Commission should not apply closed captioning requirements on start-up networks. This exemption should continue until the network reaches a certain threshold of affiliates. At that point, the network should have the same amount of time to attain full compliance as the Commission sets for programming providers in this proceeding.

### **B. The Commission Should Exempt Commercials from Captioning Requirements.**

Imposing captioning requirements on commercials will create significant administrative and operational burdens on broadcasters. Furthermore, since commercials are distributed to several broadcasters, it would be inefficient for the Commission to require each broadcaster to caption the same advertisement. The goals of captioning, however, may be achieved by

foregoing a captioning requirement and allowing the market to compel advertisers into providing captioning. After all, advertisers have an incentive to reach as many potential customers as possible.

In the event the Commission requires that commercials be captioned, the Commission should exempt local advertisements from this requirement. Since local commercials have lower budgets and reach smaller audiences, the costs of captioning would elevate the costs such that some entities would be precluded from advertising.<sup>7</sup>

C. The Commission Should Exempt Interstitial and Promotional Programming.

Broadcast stations create as well as receive a significant amount of interstitial and promotional programming daily. The spots are produced on a very short production schedule and have an equally short shelf life. Television broadcast stations would not practically be able to caption all these spots. Moreover, as the Commission correctly recognized, "most interstitial and promotional advertisements provide their principal information in textual form."<sup>8</sup> Consequently, the burdens of captioning these programs greatly outweigh any minimal benefits obtained.

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<sup>7</sup> PCC reiterates its suggestion included in its comments that the Commission exempt home-shopping type programs from closed captioning requirements. Paxson Comments at 7. For this type of program, closed captioning will be economically burdensome to program producers/suppliers and television stations because closed captioning is unnecessary and will interfere with information that is already displayed graphically for viewers.

<sup>8</sup> Notice para. 79.

**D. The Commission Should Exempt Overnight Daypart Programming From Captioning Requirements.**

The overnight daypart, from 2:00 am to 6:00 am, is the least-viewed daypart for all television homes. The overnight daypart should not be required to be captioned because it serves such a limited audience and its exemption will significantly lower costs without shortchanging a substantial portion of the audience served by captioning. Broadcast stations may be financially burdened if they are required to caption programming aired during this period given the low viewership and minimal advertising revenue generated.

**E. Infomercials Should be Exempt From Captioning Requirements.**

Based on consumer reaction, infomercials are continually being re-edited and reformatted to increase their effectiveness. They are frequently in a state of constant transition which makes captioning difficult to accomplish. The imposition of closed captioning on infomercials will either slow-up this organic process and prevent suppliers/producers from optimizing their program, or preclude re-editing and reformatting altogether. Moreover, as indicated in PCC's Comments, infomercials are already fully accessible to hearing impaired viewers as all essential information concerning the product for sale is available graphically on-screen.<sup>9</sup> Accordingly, closed captioning would only interfere with this on-screen information and defeat the goals of maximizing programming availability to hearing-impaired viewers.

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<sup>9</sup> See Paxson Comments at 7-8.

### **III. The Commission Should Refrain From Establishing Quality Standards on Closed Captioning.**

PCC agrees with the Commission that quality and accuracy standards, including spelling accuracy, should not be adopted for captioning.<sup>10</sup> To require otherwise would impose significant administrative and practical burdens on broadcasters. Broadcasters would be forced to review every captioned program before it airs because no technology exists that accurately reviews programs for errors.<sup>11</sup> Furthermore, any closed captioning requirements adopted in this proceeding are sure to generate a tremendous demand for captioning services and stenocaptioners and it is unclear whether the current captioners can perform to any particular accuracy standard or whether new captioners will have sufficient training to satisfy any such standard. Although captioning quality is important, the Commission should allow the market to promote the development of accurately captioned programming.

### **IV. Conclusion**

PCC respectfully urges the Commission to modify its proposals for implementing closed captioning requirements. The transition schedule for implementation must be at least ten years to take into account fiscal schedules that are already adopted and do not account for closed captioning expenditures.

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<sup>10</sup> Notice para. 111.

<sup>11</sup> See Comments of US West, MM Docket 95-176, at 16 (filed February 28, 1997).

Start-up broadcast networks should be exempt from closed captioning requirements to ease the financial burden of launching a network and to permit the unfettered development of alternative and new programming sources. Overnight programming, commercials, interstitial and promotional programs should also be exempt from closed captioning requirements. Any benefits that may be achieved by closed captioning such programs would be minimal when compared to the burdens of and difficulties involved in close captioning such programming.

Respectfully submitted,

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